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10/701,039	11/04/2003	Peter Worthington Hamilton	5922R2CCC	6157

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EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/701,039
Filing Date: November 04, 2003
Appellant(s): HAMILTON ET AL.

MAILED
SEP 22 2006
GROUP 1700

David K. Mattheis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/11/2006 appealing from the Office action mailed 12/21/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application Serial Number 09/715,586

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

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1. Claims 1, 2, 4, 6, 7, 13, 16 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 7, 8 and 9 of U.S. Patent No. 6,818,292.

2. Claims 1, 2, 4, 6, 7, 13, 16 and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9, 10, 14, 15, 18, 41, 50, 52, 55, 58, 66, 95, 97, 98, 100, 101, 105, 106 and 108 of copending Application No. 09/715,586.

3. Claims 1, 2, 4, 6, 7, 13, 16 and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3, 4, 10, 12-14, 17, 38-41, 47, 49-51, 53, 54, 86-89, 97-99 and 102 of copending Application No. 09/716,740.

4. Claims 1, 2, 4, 6, 7, 13, 16 and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 10, 16 of copending Application No. 10/003,900.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2,338,749	Wilbur	1-1944
US 4,054,697	Reed et al.	10-1977
US 3,819,467	Kovac	6-1974

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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1. Claims 1, 2, 4-9 and 11-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wilbur (US 2338749).

Wilbur's invention relates to wrappers of flexible paper or other equivalent sheet material [col. 1, lines 1-3]. Wilbur teaches that the invention can be embodied in a label, wrapper, envelope or other article of flexible sheet material intended for other uses [page 1, col. 2, lines 34-37]. Fig. 7 shows an embodiment having a multiplicity (plurality) of outstanding tubular burr 17 (protrusions) surrounded by a coating of adhesive 18. The outstanding burrs 17 serve as means for shielding the adhesive coating against accidental contact with other objects. When the structures are overlapped and pressed together, the burrs 17 are collapsed, and are united by the adhesive [page 2, col. 1, line 48 through col. 2, line 8].

For claims 1, 2, 4-9 and 11-17, Wilbur is silent about the percent surface area covered by the protrusions. However, since Wilbur teaches the same subject matter (a flexible wrapper sheet material) for the same application (wrapping and enveloping), and in view of the apparent coverage shown in Fig. 7, a suitable amount of surface coverage by the outstanding tubular burrs in the active area are reasonably considered to be either anticipated by Wilbur, or an obvious matter of optimization, motivated by the desire to provide sufficient shielding the adhesive coating against accidental contact with other objects.

2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Reed et al. (US 4054697).

The teachings of Wilbur are again relied upon as set forth above.

For claim 3, Wilbur lacks a showing that the protrusions are formed in an amorphous pattern. However, Reed's invention is directed to a sheet material having a continuous coating

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of pressure-sensitive adhesive, and a discontinuous layer of randomly distributed (amorphous pattern) resilient non-adhesive particles. The coating of particles have the ability to be deformed under a load and thus, upon application to a support surface, deform, under pressure, to such an extent as to bring the adhesive and the surface into fuller contact [abstract; Example 4]. It would have been obvious to one of ordinary skill in the art to substitute Wilbur's outstanding tubular burrs with Reed's coating of protruded deformable particles, which inherently has an amorphous pattern; alternatively, it would be obvious to substitute the distribution Wilbur's burrs with a random pattern, as taught by Reed, because both patterns are shown to be effective for shielding adhesives, and the selection and substitution of a known equivalent material based on its suitability for its intended use supported a *prima facie* obviousness determination. See MPEP § 2144.07.

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of the admitted prior art.

The teachings of Wilbur are again relied upon as set forth above.

For claim 10, Wilbur lacks a teaching that the wrapper is conformable. However, appellants have admitted [specification, page 1, lines 18-26] that it is known art that sheet materials with clinging character (i.e., cling film) can be used to form a closure for a container (i.e., conformable). It would have been obvious to one of ordinary skill in the art to modify Wilbur's wrapper with a known conformable base sheet material, motivated by the desire to obtain a wrapper which is able to conform and easily wrap a container.

4. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Reed et al. (US 4054697) and Kovac (US 3819467).

The teachings of Wilbur and Reed are again relied upon as set forth above.

For claims 18 and 19, Wilbur lacks a teaching of coating adhesive on both sides of the sheet material. However, Kovac's invention teaches a double faced tape which seals and holds a fabric to a wrapped frame [col. 4, lines 4-9]. It would have been obvious to one of ordinary skill in the art to modify the teachings of Wilbur and Reed by coating adhesives on both sides of the wrapper, as taught by Kovac, motivated by the desire to obtain a seal around a large container with multiple wrappers without loose edges hanging away from the container.

(10) Response to Argument

Appellants argue [Arguments, page 3] that the reference fails to teach or suggest a structure comprising between about 30% and about 70% by area of protrusions, because the cited reference is silent as to any method of making, and fails to describe a structure which is identical or substantially identical to the claimed invention. However, since Wilbur teaches the same subject matter for the same application (a flexible wrapper sheet material for wrapping and enveloping), and in view of the apparent coverage of the protruded structures shown in Fig. 7, a suitable range of surface coverage of the outstanding tubular burrs in the active area are reasonably considered to be either anticipated by Wilbur, or an obvious matter of optimization, motivated by the desire to provide sufficient protrusions for shielding the adhesive coating against accidental contact with other objects. As to the method of making, appellants are reminded that product-by-process limitation is absent from the claims. Further, in the absence of any structural limitation relating to the protrusions, Wilbur's outstanding tubular burr reads on the protrusion as claimed.

Appellants argue [Arguments, pages 3-4, bridging paragraph] that the reference teaches that one or both end portions may be coated with an adhesive and the remainder of the structure is devoid of both the adhesive and protective structure, and the examiner fails to note that the reference teaches the subject matter of wrappers in the context of a tie-band laundry wrapper having deliberately limited adhesive portions. However, there is no teaching or suggestion by Wilbur that the adhesive shielding structure is limited to be formed as end portions of a tie band. To the contrary, Wilbur expressly teaches that the structure can be embodied in a label, wrapper, envelope or other article of flexible sheet material intended for other uses, as set forth above. Appellants' argument is not persuasive.

Appellants argue [Arguments, page 4, second paragraph] for the first time that the protrusions of the Reed reference are not integral to the first and second side of the material structure as claimed. However, in the absence of a clear structural definition of what is the scope of being "integral", since Reed teaches that the randomly distributed (amorphous pattern) resilient non-adhesive particles are disposed over the continuous coating of pressure-sensitive adhesive, they are integral to the wrap material as claimed. Appellants' argument is unpersuasive.

Appellants argue [Arguments, pages 4-5, bridging paragraph] for the first time that the degree of flexibility required in a laundry tie band does not suggest or inherently demonstrate conformability in a material. However, appellants are reminded again that there is no teaching or suggestion by Wilbur that the adhesive shielding structure is limited to be formed as end portions of a tie band. To the contrary, since appellants have admitted that it is known art that sheet materials with clinging character (i.e., cling film) can be used to form a closure for a container

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(i.e., conformable), and Wilbur teaches that the structure can be embodied in a label, wrapper, envelope or other article of flexible sheet material intended for other uses, it would have been obvious to one of ordinary skill in the art to select a base sheet material which is conformable to a container, motivated by the desire to obtain a flexible sheet material which is able to conform and easily wrap a container. Appellants' argument is not persuasive.

Appellants argue [Arguments, page 5, second paragraph] that the Kovach reference fails to cure the deficiency that the protrusions of the Reed reference are not integral to the first and second sides of the material structure, and the combination of references fails to teach or suggest each of the limitation of the invention as claimed. However, as set forth above, since Reed teaches that the randomly distributed (amorphous pattern) resilient non-adhesive particles are disposed over the continuous coating of pressure-sensitive adhesive, they are integral to the wrap material as claimed. Further, since the combined teachings provide adhesive layers on both sides of the wrapping, as taught by Kovach, all the claimed limitations are accounted for, appellants' argument is unpersuasive.

Finally, appellants' statement [Arguments, page 9, last paragraph] that, when allowable subject matter is identified, an appropriate Terminal Disclaimer will be filed for the obviousness-type double patenting rejection of claims 1, 2, 4, 6, 7, 13, 16 and 17 over the claims 1, 2, 5, 7, 8, 14, 16, 17, 19 and 24 of U.S. Patent No. 6,194,062 is acknowledged.

(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Victor S. Chang
Victor S. Chang
Examiner

Conferees:

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